

§ 36.11

(1) Students who are temporarily absent from the Health Service Delivery Area during full time attendance at programs of vocational, technical, or academic education including normal school breaks;

(2) Persons who are temporarily absent from the Health Service Delivery Area for purposes of travel or employment (such as seasonal or migratory workers);

(3) Indian children placed in foster care outside the Health Service Delivery Area by order of a court of competent jurisdiction and who were residents within the Health Service Delivery Area at the time of the court order.

Secretary means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

Service means the Indian Health Service.

Service Unit Director means the Director of Indian Health Service programs for a designated geographical or tribal area of responsibility or the equivalent official of a contractor administering an IHS program.

[52 FR 35048, Sept. 16, 1987, as amended at 55 FR 4609, Feb. 9, 1990]

§ 36.11 Services available.

(a) *Type of services that may be available.* Services for the Indian community served by the local facilities and program may include hospital and medical care, dental care, public health nursing and preventive care including immunizations, and health examination of special groups such as school children.

(b) *Where services are available.* Available services will be provided at hospitals and clinics of the Service, and at contract facilities (including tribal facilities under contract with the Service).

(c) *Determination of what services are available.* The Service does not provide the same health services in each area served. The services provided to any particular Indian community will depend upon the facilities and services available from sources other than the Service and the financial and personnel

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resources made available to the Service.

(d) *Priorities when funds, facilities, or personnel are insufficient to provide the indicated volume of services.* Priorities for care and treatment, as among individuals who are within the scope of the program, will be determined on the basis of relative medical need and access to other arrangements for obtaining the necessary care.

[46 FR 40692, Aug. 11, 1981, as amended at 52 FR 35048, Sept. 16, 1987]

§ 36.12 Persons to whom health services will be provided.

(a) Subject to the requirements of this subpart, the Indian Health Service will provide direct services at its facilities, and contract health services, as medically indicated, and to the extent that funds and resources allocated to the particular Health Service Delivery Area permit, to persons of Indian or Alaska Native descent who:

(1) Are members of a federally recognized Indian tribe; and

(2) Reside within a Health Service Delivery Area designated under § 36.15; or

(3) Are not members of a federally recognized Indian tribe but are the natural minor children (18 years old or under) of a member of a Federally recognized tribe and reside within a Health Service Delivery Area designated under § 36.15.

(b) Subject to the requirements of this subpart, the Indian Health Service will also provide direct services at its facilities and, except where otherwise provided, contract health services, as medically indicated and to the extent that funds and resources allocated to the particular Health Service Delivery Area permit, to people in the circumstances listed below:

(1) To persons who meet the eligibility criteria in paragraph (a) of this section except for the residency requirement, who formerly resided within a Health Service Delivery area designated under § 36.15, and who present themselves to any Indian Health Service or Indian Health Service funded facility (and to minor children of such persons if the children meet the eligibility criteria in paragraph (a) of this

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section except for the residency requirement). Contract health services may not be authorized for these individuals;

(2) To a non-Indian woman pregnant with an eligible Indian's child but only during the period of her pregnancy through post-partum (generally about 6 weeks after delivery). In cases where the woman is not married to the eligible Indian under applicable state or tribal law, paternity must be acknowledged in writing by the Indian or determined by order of a court of competent jurisdiction;

(3) To non-Indian members of an eligible Indian's household if the medical officer in charge determines that the health services are necessary to control acute infectious disease or a public health hazard; and

(4) To an otherwise eligible person for up to 90 days after the person ceases to reside in a Health Service Delivery Area when the Service Unit Director has been notified of the move.

(c) Contract health services will not be authorized when and to the extent that Indian Health Service or Indian Health Service funded facilities are available to provide the needed care. When funds are insufficient to provide the volume of contract health services needed by the service population, the Indian Health Service shall determine service priorities on the basis of medical need.

(d) The Indian Health Service may provide direct services at its facilities on a fee-for-service basis to persons who are not beneficiaries under paragraphs (a) and (b) of this section under a number of authorities including the following:

(1) In emergencies under section 322(b) of the Public Health Service Act, 42 U.S.C. 249(b), and 42 CFR 32.111 of the regulations;

(2) To Public Health Service and other Federal beneficiaries under Economy Act (31 U.S.C. 1535) arrangements to the extent that providing services does not interfere with or restrict the provision of services to Indian and Alaska Native beneficiaries; and

(3) To non-beneficiaries residing within the Health Service Delivery Area when approved by the tribe or tribes located on the reservation but

only to the extent that providing services does not interfere with or restrict the provision of services to Indian and Alaska Native beneficiaries.

(Approved by the Office of Management and Budget under control number 0915-0107)

[52 FR 35048, Sept. 16, 1987, as amended at 55 FR 4609, Feb. 9, 1990]

§ 36.13 Authorization for contract health services.

(a) No payment will be made for medical care and services obtained from non-Service providers or in non-Service facilities unless the applicable requirements of paragraphs (b) and (c) below have been met and a purchase order for the care and services has been issued by the appropriate ordering official to the medical care provider.

(b) In non-emergency cases, a sick or disabled Indian, or an individual or agency acting on behalf of the Indian, or the medical care provider shall, prior to the provision of medical care and services, notify the appropriate ordering official of the need for services and supply information that the ordering official deems necessary to determine the relative medical need for the services and the individual's eligibility. The requirement for notice prior to providing medical care and services under this paragraph may be waived by the ordering official if:

(1) Such notice and information is provided within 72 hours after the beginning of treatment or admission to a health care facility; and

(2) The ordering official determines that giving of notice prior to obtaining the medical care and services was impracticable or that other good cause exists for the failure to provide prior notice.

(c) In emergency cases, a sick or disabled Indian, or an individual or agency acting on behalf of the Indian, or the medical care provider shall, within 72 hours after the beginning of treatment for the condition or after admission to a health care facility notify the appropriate ordering official of the fact of the admission or treatment, together with information necessary to determine the relative medical need for the services and the eligibility of the